



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Donald G. Vandiver
First Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR96-0122

Dear Mr. Vandiver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37896.

The City of Lubbock (the "city") received a request for certain information relating to the Economic Development Incentives Given to the Texas-Louisiana League (Baseball), specifically, the amount of cash incentives, the services provided by the city without reimbursement (listed by type of service and estimated dollar value), and other incentives provided and estimated value. You state that the city has provided the requestor with the documents that are responsive to his request. However, you claim that some of the requested information does not exist at all and that some of the requested information does not exist in the form requested and would require extraction from existing records and extrapolation of the existing values to produce the estimated dollar value. Therefore, you claim that the city is not required to produce the remainder of the requested information.

Generally, the Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 534 (1989). As the information responsive to the first request, the amount of cash incentives, does not exist, the city need not respond to that request.

You state that the information responsive to the second and third parts of the request does not exist in the requested form. In the most recent legislative session, the legislature substantively amended chapter 552 of the Government Code. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 1, 1995 Tex. Sess. Law Serv. 5127 (Vernon). As part of this revision, the legislature added section 552.231, which provides:

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form as determined in accordance with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of the receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or

in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

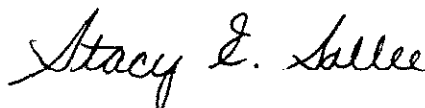
(2) wants the information in the form in which it is available.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

If the city has made the determination set out in subsection (a), the city must follow the requirements of section 552.231. You state that the city has notified the requestor that the information is not available in the form requested. If the city's notice complies with section 552.231, the city has fulfilled its obligation until the requestor notifies the city as provided by subsection (d). If the city has not provided this notice to the requestor, the city should do so immediately. As the city has raised no exception to disclosure, the city may not withhold the requested information if it cannot make the determination provided for in subsection (a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37896

cc: Mr. Mark C. Harwell
President
Harwell Entertainment Enterprises
P.O. Box 671
Addison, Texas 75001